

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)
)
LAMBDA COMMUNICATIONS, INC.)
)
Emergency Petition for Rulemaking)
to Apply Expanded Interconnection)
Obligations to the Puerto Rico)
Telephone Company)

3708
RM-6708

To: The Commission

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COMMENTS OF CELPAGE, INC.

Frederick M. Joyce
Its Counsel

JOYCE & JACOBS
1019 19th Street, N.W.
14th Floor, Penthouse 2
Washington, D.C. 20036
(202) 457-0100

Date: November 22, 1995

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SUMMARY OF COMMENTS

For far too long, the PRTC has operated its monopoly telephone services with seeming indifference to its Title II carrier obligations under the Act. The consequences have been apparent and detrimental to the public interest: customers pay unreasonably high rates for basic telephone services, and businesses that depend upon fair and reasonable access to the local network have struggled with unnecessary delays and exorbitant expenses in attempting to deliver competitive communications services to the people of Puerto Rico.

This FCC has publicly stated that its central mission is to expedite the delivery of advanced, reasonably priced communications services to everyone throughout the U.S. The PRTC's practices are an impediment to that statutory goal. Celpage joins with Lambda in imploring this FCC to order PRTC to open its network to competitive carriers, and to bring its interconnect practices into line with those of most all other local carriers in the United States.

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COMMENTS OF CELPAGE, INC.

Celpage, Inc. ("Celpage"), through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in support of Lambda Communications Inc.'s ("Lambda") above-referenced Petition for Rulemaking ("Petition"). Celpage wholly supports Lambda's request that the Puerto Rico Telephone Company ("PRTC") be subject to the FCC's expanded interconnection obligations, and that the FCC should eliminate PRTC's exemption from these obligations.

I. Statement of Interest.

Celpage, following its recent merger with TPI Transmission Services, Inc. (to form PanAm Wireless, Inc.) is the largest one-way paging company in the Commonwealth of Puerto Rico. Celpage operates FCC-licensed paging facilities throughout Puerto Rico and the Caribbean.

Both Celpage and TPI have had numerous interconnection disputes with PRTC throughout more than a decade of operations in Puerto Rico; consequently, Celpage is uniquely qualified to comment on the issues raised by Lambda's Petition. The rule changes

proposed in Lambda's Petition are likely to have an immediate impact on Celpage's paging business and its commercial dealings with PRTC. Consequently, Celpage has standing as a party in interest to file comments in this proceeding.

II. Summary of Petition.

Apparently, Lambda has repeatedly asked PRTC for interconnection of Lambda's fiber optic local access network at PRTC's central offices. PRTC has denied Lambda's request, stating that, as a member of the NECA access pool, it is exempt from FCC expanded interconnection requirements. Lambda states that PRTC is the only "Tier 1" local exchange carrier ("LEC") that is exempt from the FCC's expanded interconnection requirements. Lambda's Petition states that PRTC "does not need or deserve special treatment"; that PRTC should be subject to the same interconnection requirements as are all other large LECs in the United States.

Lambda states that PRTC should be subject to expanded interconnection requirements, because it will stimulate competition for local communications services, it may lead to a needed reduction in local telephone rates, and, PRTC has the financial and technical wherewithal to comply with expanded interconnection requirements. Lambda concludes that PRTC's status as a member of the NECA access pool, should have no bearing on its obligations to provide central office access to competitive carriers.

III. The FCC Should Investigate PRTC's Unjust & Unreasonable Interconnection Practices

Although Lambda has justifiably expressed its outrage that

PRTC is not subject to expanded interconnection obligations, its recommended solution, initiation of an FCC Rulemaking proceeding, may be too timid in light of the harm that PRTC's interconnection practices have caused to Puerto Rico-based carriers and customers. Celpage submits that, rather than opening a formal Rulemaking proceeding, this agency should immediately order PRTC to open its network to competitors and customers under just and reasonable terms and conditions, as required by the Communications Act. Swift FCC action is necessary to correct the deplorable state of central office access in Puerto Rico.

Lambda is certainly not the first communications company in Puerto Rico to complain about PRTC's interconnection practices. In recent memory, at least two formal FCC complaints have been filed against PRTC, alleging unjust and discriminatory interconnection practices by PRTC against FCC licensed radio paging companies. For their part, Celpage's affiliated entities have had numerous problems with basic interconnection requests to PRTC.

Since it began providing paging service in Puerto Rico in 1989, Celpage, like other paging companies in Puerto Rico, has experienced repeated difficulties in obtaining appropriate interconnect services from PRTC. Celpage has made a very simple service request that has been unreasonably denied by PRTC for several years. For years, Celpage has been writing, telephoning and meeting with PRTC officials in an effort to obtain automatic number identification ("ANI") services at the current Type 1 interconnect rate.

This type of interconnect service is critical to Celpage. Celpage has invested hundreds of thousands of dollars into state of the art paging equipment; Celpage's principal marketing advantage is its ability to provide advanced alphanumeric and related paging services that few other paging companies provide. These services cannot be provided without advanced, but readily available digital interconnect services that PRTC can provide, such as ANI or the Signaling System Seven ("SS7") network protocol.

What should have been a simple service request has turned into a protracted problem, the resolution of which is ultimately within the jurisdiction of the FCC. In response to Celpage's reasonable request for Type I or Type II interconnect, PRTC has instead informed Celpage that it can only have centrex line access or direct inward dialing ("DID") access, at rates substantially higher than those charged in the states for paging interconnect services. Moreover, PRTC has flatly refused to provide Celpage with SS7 services, though PRTC makes such services available to itself for competitive services such as electronic mail.

In light of substantial upgrades in PRTC's equipment, and in light of PRTC's entry into many competitive wireless services such as cellular telephone and paging, these interconnection problems should not be tolerated by the FCC. Type I and Type II interconnect services are routinely available to paging and messaging services, at reasonable rates, everywhere in the United States, except in Puerto Rico. There can be no doubt that PRTC's actions are unlawfully discriminatory, and in violation of PRTC's

interconnect obligations under Title II of the federal Communications Act of 1934, as amended ("the Act").

ANI is a protocol that many Bell companies, and presumably PRTC, use for their own land mobile services; PRTC should be able to provide ANI to Celpage at no additional monthly cost, or for some nominal cost. Likewise, since PRTC uses SS7 for its "e-mail" services, it has absolutely no excuse for not making that service available to any enhanced service or land mobile service provider that requests it. Faced with these facts, PRTC's continued intransigence on basic interconnect requests is entirely unacceptable and unlawful. The FCC should investigate PRTC's unjust, discriminatory, and unlawful interconnect practices, and put an end to them.

IV. PRTC's Access Practices Violate the Act.

PRTC's refusal to provide Celpage with ANI or SS7 services upon demand, at fair rates, and under reasonable terms and conditions, is a blatant violation of the Act and of the FCC's policies concerning wireline carriers' interconnect obligations. Also, since PRTC now aggressively competes against Celpage and other land mobile and enhanced services providers in the marketplace, its unlawful use of its monopoly telephone services could easily be construed as an anti-competitive action. The FCC has ample authority under the Act to investigate these matters, and to fashion swift and adequate relief for all adversely affected customers and competitors of PRTC.

The FCC's statements concerning wireline carrier interconnect obligations could not be clearer; and PRTC could not be more blatantly in violation of those obligations. The FCC, through a series of "Policy Statements" and "Declaratory Rulings," has regularly exercised its jurisdiction over interconnection matters to ensure that interconnection to the nationwide telephone network will be provided by the wireline telephone companies ("WTCs") such as PRTC on fair and reasonable terms. See, e.g., Cellular Interconnection (Declaratory Ruling), 2 FCC Rcd. 2910 (1987); see also, Radio Common Carrier Services (Post-Divestiture BOC Practices), 59 RR 2d 1275 (1986).

The FCC has recognized that at some point the intrastate component of charges for physical interconnection may be so high as to effectively preclude interconnection. In that case, the FCC has determined that it may assert preemptive authority over the intrastate charges. Cellular Interconnection; at 2910.

The FCC also has authority to require that the terms and conditions of interconnection with the local telephone company's network be negotiated "in good faith." Id. at 2912. Section 201 of the Act makes it "the duty of every common carrier ... to furnish its services upon reasonable request," while mandating that those services be offered under terms "not less favorable than that offered to [the telephone company's] affiliated wireline cellular carrier." Id. The FCC has also stated that those reasonable interconnection agreements might not be the same as those used by the wireline carrier, if so desired by the non-wireline. Id. at

carrier." Id. The FCC has also stated that those reasonable interconnection agreements might not be the same as those used by the wireline carrier, if so desired by the non-wireline. Id. at 2912-13, 2916.

The FCC has stated that Section 202 of the Act prohibits "unreasonable discrimination" in the provision of interstate common carrier services. Id. The FCC has also ruled that if a telephone company refuses a request for certain interconnection services, has caused unreasonable delays in providing the interconnection, or imposes unreasonable charges for the interconnection, the aggrieved party may file a Section 208 Complaint with the FCC. Id.

In addition, the FCC has often stated that it will take whatever action is necessary to prevent wireline carriers "from utilizing their control over the wireline facilities as a method of gaining an unfair competitive advantage" Bonduel Telephone Company, 68 FCC2d 497, 498 (1978); Morrison Radio Relay Corporation, 31 FCC2d 612, 616 (1971); Memphis Radiotelephone Company v. Mahaffey Message Relay, 49 FCC2d 258, 259 (1974).

All of these authorities govern PRTC's interconnect obligations to Celpage and to other competitive carriers in Puerto Rico. PRTC's interconnect practices, as detailed herein and in Lambda's Petition and previous complaints to the Commission, blatantly violate these statutory and regulatory requirements. The FCC has ample grounds and authority to order PRTC to take immediate remedial actions to correct these serious violations of its interconnect obligations.

**V. PRTC's Unlawful Interconnect Practices are Harming
the Development of Competitive Services in PR.**

Celpage wholeheartedly agrees with Lambda's conclusion that PRTC's interconnect practices are harming the development of competitive communications services in Puerto Rico. For example, Celpage has been activating new paging subscribers each month at a substantial rate; each month that it must operate without reasonably priced ANI services causes it considerable marketing, financial and service problems. It has not escaped Celpage's attention that PRTC, while refusing to provide Celpage with necessary interconnect services, has aggressively gone after Celpage's paging customers, while also pursuing other competitive service markets, such as electronic mail.

Lambda has accurately observed that PRTC enjoys a unique competitive advantage as a government owned monopoly LEC. That public ownership arrangement, and its monopoly carrier status, has led PRTC to engage in many questionable practices, including the apparent cross-subsidization of non-monopoly communications services. Because of this arrangement and the lack of competitive alternatives in Puerto Rico, it is no surprise that local customers in Puerto Rico pay some of the highest telephone rates in the U.S., while competitive carriers are saddled with some of the highest interconnect fees in the U.S. The unfortunate consequence of PRTC's monopolistic and anticompetitive practices is that this commercially vibrant Commonwealth of over three million people, has failed to benefit from the rapid deployment of advanced,

competitive communications services that is occurring in the 50 states.

Perhaps the surest way that the FCC could put a swift end to these anti-competitive practices, and stimulate competition in Puerto Rico, would be through ensuring competitive, open access to PRTC's central office. The FCC has ample authority to order PRTC to open up its network; the public interest in making fair and reasonable alternative communication services available to Puerto Rico's citizens surely warrants these actions. For its part, Celpage would certainly consider turning to Lambda or other competitive carriers to obtain alternative local access services, at fair and non-discriminatory rates, since PRTC has so obviously failed in its obligation to do so.

CONCLUSION.

For far too long, the PRTC has operated its monopoly telephone services with seeming indifference to its Title II carrier obligations under the Act. The consequences have been apparent and detrimental to the public interest: customers pay unreasonably high rates for basic telephone services, and businesses that depend upon fair and reasonable access to the local network have struggled with unnecessary delays and exorbitant expenses in attempting to deliver competitive communications services to the people of Puerto Rico.

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Respectfully submitted,

CELPAGE, INC.

By: 

Frederick M. Joyce
Its Counsel

JOYCE & JACOBS
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036
(202) 457-0100

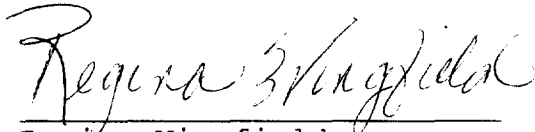
Date: November 22, 1995

CERTIFICATE OF SERVICE

I, Regina Wingfield, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 22nd day of November, 1995, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid, to the following:

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Richard Rubin, Esq.
Mitchell F. Brecher, Esq.
Fleischman & Walsh, LLP
1400 16th Street, NW
Suite 600
Washington, DC 20036


Regina Wingfield